| 1  | DAVID R. EBERHART (S.B. #195474)                                  | **E-Filed 2/10/2011**                              |  |  |
|----|---|--|--|--|
| 2  | deberhart@omm.com<br>SHARON M. BUNZEL (S.B. #181609)              |  |  |  |
| 3  | sbunzel@omm.com<br>NORA M. PUCKETT (S.B. #248743)                 |  |  |  |
| 4  | npuckett@omm.com O'MELVENY & MYERS LLP                            |  |  |  |
|    | Two Embarcadero Center, 28th Floor                                |  |  |  |
| 5  | San Francisco, CA 94111<br>Telephone: (415) 984-8700              |  |  |  |
| 6  | Attorneys for Plaintiff EBAY, INC.                                |  |  |  |
| 7  |   |  |  |  |
| 8  |   | ES DISTRICT COURT                                  |  |  |
| 9  | NORTHERN DISTRICT OF CALIFORNIA                                   |  |  |  |
| 10 | SAN JOSE DIVISION   |  |  |  |
| 11 | EBAY, INC.,   | ) Case No. CV 08-04052 JF PSG                      |  |  |
| 12 | Plaintiff,  | )<br>) STIPULATION AND <del>[PROPOSED]</del> -     |  |  |
| 13 | v.  | ORDER CONTINUING CASE MANAGEMENT CONFERENCE        |  |  |
| 14 | DIGITAL POINT SOLUTIONS, INC.,<br>SHAWN HOGAN, KESSLER'S FLYING   | )<br>)   |  |  |
| 15 | CIRCUS, THUNDERWOOD HOLDINGS,<br>INC.K TODD DUNNING, DUNNING      | )<br>Judge: Hon. Jeremy Fogel                      |  |  |
| 16 | ENTERPRISE, INC., BRIAN DUNNING, BRIANDUNNING.COM, and DOES 1-20, | ) Dept.: Courtroom 3                               |  |  |
| 17 | Defendants.   | )<br>)   |  |  |
| 18 |   | <del></del>  |  |  |
| 19 | THE PARTIES TO THE ABOVE-E  | NTITLED ACTION HEREBY STIPULATE                    |  |  |
| 20 | PURSUANT TO CIVIL LOCAL RULE 7-1                                  | 2 AND 16-2:  |  |  |
| 21 | Plaintiff alleges that Defendan                                   | ts, as participants in eBay's affiliate marketing  |  |  |
| 22 | program, engaged in cookie stuffing intended t                    | o defraud Plaintiff. Defendants deny Plaintiff's   |  |  |
| 23 | allegations.  |  |  |  |
| 24 | 2. Defendants Shawn Hogan and                                     | Brian Dunning were indicted on June 24, 2010.      |  |  |
| 25 | United States v. Hogan, CR 10-0495 JF (N.D.                       | Cal. June 24, 2010); United States v. Dunning, CR  |  |  |
| 26 | 10-0494 JF (N.D. Cal. June 24, 2010). The inc                     | dictments are based on the same alleged cookie     |  |  |
| 27 | stuffing scheme at issue in this civil action.                    |  |  |  |
| 28 | 3. On June 29, 2010, the United 3                                 | States filed a Notice of Related Case stating that |  |  |
|    |   | Case No. CV 08-04052 JF PSG                        |  |  |

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| 1  | defendants Shawn Hogan and Brian Dunning in the instant action are alleged to have engaged in              |
|----|--|
| 2  | the same cookie stuffing scheme that is the subject of the indictments. On July 7, 2010, the Court         |
| 3  | issued an order finding that the instant civil action and the aforementioned criminal cases are            |
| 4  | related.   |
| 5  | 4. Based on the foregoing, on July 28, 2010, the parties to this action stipulated and                     |
| 6  | moved that this civil action be stayed in its entirety as to all parties until further order by the Court. |
| 7  | The parties also stipulated and moved the Court to vacate the existing case management dates,              |
| 8  | including but not limited to the fact and expert discovery cut-off dates, the pretrial conference date,    |
| 9  | and the jury trial date. The parties stipulated and moved that a further case management                   |
| 10 | conference be set for February 11, 2011.   |
| 11 | 5. On August 3, 2010, the Court, pursuant to the parties' stipulation and motion,                          |
| 12 | stayed the case in its entirety as to all parties and vacated all existing case management dates.          |
| 13 | The Court set a further case management conference for February 11, 2011 at 10:30 a.m.                     |
| 14 | 6. The criminal cases against defendants Shawn Hogan and Brian Dunning are                                 |
| 15 | ongoing, and no trial dates have been set in those matters.  |
| 16 | 7. The parties stipulate and request that the Court continue the case management                           |
| 17 | conference scheduled for February 11, 2011 at 10:30 a.m. until August 12, 2011, or as otherwise            |
| 18 | convenient for the Court. If either or both of the criminal cases are resolved prior to the                |
| 19 | rescheduled case management conference, the parties shall timely inform the Court.                         |
| 20 | 8. Notwithstanding the foregoing, the parties further stipulate that any party may                         |
| 21 | move at any time to lift the current stay or to set a case management conference before August             |
| 22 | 12, 2011.  |
| 23 | IT IS SO STIPULATED.   |
| 24 | DATED: January 26, 2011 DAVID R. EBERHART SHARON M. BUNZEL   |
| 25 | NORA PUCKETT<br>O'MELVENY & MYERS LLP  |
| 26 | By: /s/ <i>David R. Eberhart</i>   |
| 27 | David R. Eberhart  |
| 28 | Attorneys for Plaintiff EBAY, INC.   |

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| 1 2    | DATED: January 26, 2011 | SEYAMACK KOURETCHIAN<br>ROSS M. CAMPBELL<br>COAST LAW GROUP LLP        |
|--------|-------------------------|--|
| 3      |                         | By: /s/ Ross M. Campbell   |
| 4      |                         | By: <u>/s/ Ross M. Campbell</u> Ross M. Campbell                       |
| 5      |                         | Attorneys for Defendants SHAWN HOGAN and DIGITAL POINT SOLUTIONS, INC. |
| 6      | DATED: January 26, 2011 | LEO J. PRESIADO  |
| 7      | DATED. January 20, 2011 | RUS, MILIBAND & SMITH  |
| 8<br>9 |                         | By: <u>/s/ Leo J. Presiado</u> Leo J. Presiado                         |
| 10     |                         | Attorneys for Defendants THUNDERWOOD                                   |
| 11     |                         | HOLDINGS, INC., BRIAN DUNNING and BRIANDUNNING.COM                     |
| 12     |                         |  |
| 13     |                         |  |
| 14     | DATED: January 26, 2011 | PATRICK K. MCCLELLAN<br>LAW OFFICE OF PATRICK K. MCCLELLAN             |
| 15     |                         | By: /s/ Patrick K. McClellan Patrick K. McClellan                      |
| 16     |                         |  |
| 17     |                         | Attorneys for Defendant KESSLER's FLYING CIRCUS                        |
| 18     |                         |  |
| 19     |                         |  |
| 20     | DATED: January 26, 2011 | TODD DUNNING   |
| 21     |                         | By: /s/ Todd Dunning Todd Dunning                                      |
| 22     |                         | •  |
| 23     |                         | Pro Se   |
| 24     |                         |  |
| 25     | DATED: January 26, 2011 | DUNNING ENTERPRISE, INC.   |
| 26     |                         | By: /s/ Todd Dunning   |
| 27     |                         | By: /s/ Todd Dunning Todd Dunning                                      |
| 28     |                         |  |
|        |                         | - 3 - Case No. CV 08-04052 JF PSG                                      |

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| 1       | <u>ATTESTATION</u>   |
|---------|--|
| 2       | Pursuant to General Order No. 45 X(B), I hereby attest that concurrence in the filing of |
| 3       | this document has been obtained from each of the above-listed signatories.               |
| 4       |  |
| 5       | By:/s/ David R. Eberhart   |
| 6       | David R. Eberhart  |
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| 1                               | <u>ORDER</u>   |
|---------------------------------|--|
| 2                               | Pursuant to the foregoing stipulation, and good cause appearing therefor, IT IS HEREBY           |
| 3                               | ORDERED that the case management conference scheduled for February 11, 2011 at 10:30 a.m.        |
| 4                               | shall be continued until August 12, 2011 at 10:30 Amphis stipulation is without prejudice to any |
| 5                               | party moving to lift the current stay before the continued case management conference should the |
| 6                               | circumstances so warrant. Any party may also move the Court to set a case management             |
| 7                               | conference before August 12, 2011.   |
| 8                               | IT IS SO ORDERED.  |
| 9                               | Dated:   |
| 10                              | The Afhorable Jeren of Legel United States District Court Judge Northern District of California  |
| 11                              |  |
| 12                              | SF1:811592   |
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|                                 | - 5 - Case No. CV 08-04052 JF PSG  |